

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-155-E

IN RE:)	
)	
Mark Baker,)	<u>DUKE ENERGY PROGRESS, LLC’S REPLY IN SUPPORT OF MOTION TO DISMISS</u>
Complainant,)	
)	
v.)	
)	
Duke Energy Progress, LLC,)	
Respondent.)	
_____)	

Pursuant to S.C. Code Ann. Regs. 103-829(A), Respondent Duke Energy Progress, LLC (“DEP” or the “Company”) submits to the Public Service Commission of South Carolina (“Commission”) its reply in support of the motion to dismiss Complainant Mark Baker’s (“Complainant”) Complaint. For the reasons that follow, as well as those set forth in the motion, the Commission should dismiss the Complaint.

ARGUMENT

Except in situations not applicable here, the Commission’s regulations mandate that “any entity . . . must be represented by an attorney admitted to practice law in South Carolina.” S.C. Code Ann. Regs. 103-805(B). Further, the Commission’s regulations state that “[n]o one shall be permitted to represent a party where such representation would constitute the unauthorized practice of law.” S.C. Code Ann. Regs. 103-805(A); *see also* Rule 5.5, SCRPC, Rule 407, SCACR (forbidding the unauthorized practice of law in South Carolina). There is no exception depending on the stage of the proceedings—the bar is unequivocal. Accordingly, regardless of whether Complainant seeks to represent an unidentified alleged customer or the Soft Lights Foundation, he

is not permitted to do so under South Carolina law. Complainant runs an organization in Oregon, is not a DEP customer, and is not a member of the South Carolina Bar.

Further, Complainant has not personally suffered an injury-in-fact. See *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (holding an injury-in-fact is “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent, not conjectural or hypothetical’” (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992))); *Joytime Distribs. & Amusement Co., Inc. v. State*, 338 S.C. 634, 639–40, 528 S.E.2d 647, 650 (1999) (stating “the injury must be of a personal nature to the party bringing the action, not merely of a general nature which is common to all members of the public”). And the U.S. Supreme Court has rejected Complainant’s only other attempt to show standing, clarifying that mere allegations “that some (unidentified) members . . . will suffer (unidentified) concrete harm as a result” of one’s actions is a “novel approach to the law of organizational standing” that “would make a mockery of our prior cases.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009).

Under these circumstances, Complainant plainly lacks standing to move forward with this Complaint on behalf of himself, the Soft Lights Foundation, or an unidentified alleged customer. For the same reasons, he also lacks standing to demand an investigation by the Commission. The inadmissible testimony from a customer of a different utility in New York does not and cannot carry Complainant across the finish line. Nor does the picture Complainant has repeatedly attached to his emails to the Commission, despite conceding this is not a picture of DEP streetlights.

Simply put, this is a generalized grievance from an out-of-state organization that does not like LED lights. Fair enough. But respectfully, Complainant cannot engage in the unauthorized practice of law to move forward with his facially implausible Complaint before the Commission when he lacks standing to maintain this action.

CONCLUSION

The Commission should dismiss the Complaint, stay all deadlines for all parties and hold the hearing in abeyance pending resolution of this motion, and reject Complainant's procedurally improper request for relief in his May 25, 2022 email to the Commission.

Respectfully submitted this 31st day of May 2022.

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and

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Counsel for Duke Energy Progress, LLC

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
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DOCKET NO. 2022-155-E**

Mark Baker,)	
)	
Complainant/Petitioner,)	
)	CERTIFICATE OF SERVICE
v.)	
)	
Duke Energy Progress, LLC,)	
)	
Defendant/Respondent.)	
)	

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Robinson Gray Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below the **Reply in Support of Motion to Dismiss the Complaint on behalf of Duke Energy Progress, LLC** in the foregoing matter by electronic mail and/or by placing a copy of same in the U.S. Mail addressed as follows:

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Dated at Columbia, South Carolina this 31st day of May 2022.

